

1 Tina Wolfson, SBN 174806
twolfson@ahdootwolfson.com
2 Robert Ahdoot, SBN 172098
rahdoot@ahdootwolfson.com
3 Theodore W. Maya, SBN 223242
tmaya@ahdootwolfson.com
4 **AHDOOT & WOLFSON, PC**
10728 Lindbrook Drive
5 Los Angeles, California 90024
6 Tel: 310-474-9111; Fax: 310-474-8585

7 Graham B. LippSmith, SBN 221984
glippsmith@klwtlaw.com
8 Jaclyn L. Anderson, SBN 258609
janderson@klwtlaw.com
9 Frank A. Perez, SBN 305832
fperez@klwtlaw.com
10 **KASDAN LIPPSMITH WEBER TURNER LLP**
11 360 East 2nd Street, Suite 300
Los Angeles, California 90012
12 Tel: (213) 254-4800
13 Fax: (213) 254-4801

14 Attorneys for Plaintiff and All Others Similarly Situated

15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19 MICHAEL FRANKLIN, individually and on
behalf of all others similarly situated,

20
21 Plaintiff,

22 vs.

23 BRINKER INTERNATIONAL, INC. d/b/a
CHILI'S GRILL & BAR; and DOES 1
24 through 50, inclusive,

25 Defendants.
26
27
28

Case No.: 18-5323

CLASS ACTION

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

1 **COMPLAINT**

2 Plaintiff Michael Franklin (“Plaintiff”), individually and on behalf of the proposed class
3 described below, brings this action for injunctive relief, and actual and statutory damages against
4 Defendant Brinker International, Inc. d/b/a Chili’s Grill & Bar (“Brinker”) inclusive, and alleges
5 the following on information and belief:

6 **THE PARTIES**

7 1. Plaintiff is a citizen and current resident of Los Angeles County, California.

8 2. Defendant Brinker is a Delaware Corporation with its principal place of business
9 located at 6820 LBJ Freeway, Dallas, TX 75240.

10 3. The true names and capacities of Defendants DOES 1 through 50 are unknown to
11 Plaintiff, and Plaintiff will seek leave of court to amend this complaint to allege such names and
12 capacities as soon as they are ascertained.

13 4. Brinker and DOES 1 through 50 are collectively referred to herein as
14 “Defendants.”

15 5. At all times herein mentioned, each of the Defendants was the agent, servant,
16 partner, aider and abettor, co-conspirator, and/or joint venturer of each of the other Defendants
17 herein and was at all times operating and acting within the purpose and scope of said agency,
18 service, employment, partnership, conspiracy and/or joint venture and rendered substantial
19 assistance and encouragement to the other Defendants, knowing that their collective conduct
20 constituted a breach of duty owed to Plaintiff. Each of Defendants 1 through 50 is responsible,
21 legally, negligently or in some other actionable manner, for the events and happenings
22 hereinafter referred to, and caused injuries and damages proximately thereby to Plaintiff and the
23 Classes as hereinafter alleged, either through co-defendants’ conduct or through the authorized
24 and/or ratified conduct of its agents, servants or employees or in some other manner.

25 6. There exists and, at all times herein mentioned there existed, a unity of interest in
26 ownership between certain Defendants and other certain Defendants such that any individuality
27 and separateness between the certain Defendants has ceased, and these Defendants are the alter
28 egos of the other certain Defendants and exerted control over those Defendants. Adherence to the

1 fiction of the separate existence of these certain Defendants as entities distinct from other certain
2 Defendants will permit an abuse of the corporate privilege and would sanction a fraud and/or
3 promote injustice.

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over the subject matter of this class action pursuant to
6 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and
7 cost, and the action is between citizens of different states.

8 8. This Court also has jurisdiction under the Class Action Fairness Act, 28 U.S.C.
9 § 1332(d)(2), given that the amount in controversy exceeds \$5 million, and there are more than
10 100 putative class members, some of whom are citizens of states different from that of
11 Defendants.

12 9. Venue in the United States District Court for the Central District of California is
13 proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff resides in this district, and a
14 substantial part of the events or omissions giving rise to Plaintiff's claims and causes of action
15 occurred in this judicial district.

16 **CLASS ACTION ALLEGATIONS**

17 10. Plaintiff brings this case as a class action pursuant to Federal Rule of Civil
18 Procedure 23 and on behalf of a nationwide class defined as follows:

19 All U.S. residents who made a debit or credit card purchase at a Chili's restaurant
20 from March 2017 through April 2017 (the "Class," or the "Nationwide Class").

21 11. Plaintiff further brings this case as a class action on behalf of a statewide subclass
22 defined as follows:

23 All California residents who made a debit or credit card purchase at a Chili's
24 restaurant from March 2017 through April 2017 (the "California Class").

25 12. **Exclusions from the Class.** Plaintiff specifically excludes from the Class all
26 defendants, defendants' subsidiaries or affiliates, entities in which any defendant has a
27 controlling interest, and any and all of defendants' employees, affiliates, legal representatives,
28 successors or assignees. Plaintiff also excludes from the Class any judicial officers assigned to

1 this case and their immediate family members.

2 13. **Ascertainability.** Plaintiff brings this action on behalf of himself and on behalf
3 the Class, which is comprised of members identified by the class definition.

4 14. **Numerosity.** The members of the Class are so numerous that their joinder would
5 be impracticable, and disposition of their claims in a class action rather than in individual actions
6 would benefit the parties and the courts.

7 15. **Means for Identification.** Reasonably available means of identifying class
8 members (at the appropriate time following class certification) exist.

9 16. **Community of Interest -- Commonality.** There is a well-defined community of
10 interest amongst the members of the Class in the questions of law. Questions of fact and law
11 predominate and include but are not limited to the following:

- 12 • Whether Defendants were negligent in safeguarding Class Members' debit or
13 credit card information.
- 14 • Whether Defendants were negligent in storing Class Members' debit or credit
15 card information for longer than necessary.
- 16 • Whether Defendants negligently failed to implement and maintain commercially
17 reasonable procedures to ensure the security of Class Members' debit or credit card information;
- 18 • Whether Defendants owed a duty to protect Class Members' debit or credit card
19 information ;
- 20 • Whether Defendants have a special relationship with Class Members giving rise
21 to a tort duty to protect their debit or credit card information;
- 22 • Whether Defendants, after discovering the data breach, negligently failed to take
23 steps to: (i) promptly notify Class Members; and (ii) protect Class Members in a timely manner;
- 24 • Whether Defendants should be required to pay damages for compromising Class
25 Members' debit or credit card information; and
- 26 • Whether Defendants should be required to pay the reasonable cost of credit
27 monitoring services for Class Members.

28 17. **Community of Interest – Typicality.** The named Plaintiff's claims are typical of

1 those of the Class.

2 18. **Community of Interest – Adequacy of Class Representatives.** The named
3 Plaintiff can fairly and adequately represent the Class because he is a Class Member, has claims
4 that are typical of the Class, and there is no reason why he cannot adequately represent the Class.

5 19. **Community of Interest – Adequacy of Counsel.** Counsel for Plaintiff are
6 competent, qualified, and experienced in large class actions, multiparty complex cases and
7 product defect cases, and there is no reason why they cannot adequately represent the Class.

8 20. **Impracticability of joinder.** Joinder of the unnamed Class Members on an
9 individual basis would be impracticable in light of their number and their locations throughout
10 the State of California.

11 21. **No Better Remedy.** There is no plain, speedy, or adequate remedy other than by
12 maintenance of this Class since the damage to each victim is relatively small, making it
13 economically infeasible to pursue lawful remedies other than by a class action. The Class would
14 be superior to individualized actions for the fair and efficient adjudication of this controversy.

15 22. **No Individualized Defenses.** There are no predominately unique or
16 individualized defenses anticipated in this action that might be asserted against Plaintiff
17 individually, as distinguished from the Class.

18 23. **Fees.** Plaintiff has incurred and, during the pendency of this action, will incur
19 expenses for attorneys' fees and costs herein. Such attorneys' fees and costs are necessary for the
20 prosecution of this action and will result in a benefit to the Class. This action will result in the
21 enforcement of important rights supported by strong public policy affecting the public interest,
22 conferring a significant benefit to the general public and a large class of persons.

23 **FACTUAL ALLEGATIONS**

24 24. On May 12, 2018, Brinker issued a public notice¹ wherein the company claimed
25 that on May 11, 2018 it "learned that some of [their] Guests' payment card information was
26 compromised at certain Chili's restaurants as the result of a data incident." According to Brinker,
27

28 ¹ Brinker International News Releases, *Notice of Unauthorized Access to Chili's Grill & Bar Guest Data*, available at <http://brinker.mediaroom.com/ChilisDataIncident> (last visited June 12, 2018).

1 “the data incident was limited between March – April 2018.”

2 25. Between March and April 2018, Plaintiff visited the Chili’s restaurant located at
3 4931 Candlewood Street, Lakewood, CA 90712 on approximately three occasions. During these
4 visits, Plaintiff made debit and credit card purchases. For one, Plaintiff made a credit card
5 purchase at the Lakewood Chili’s on April 21, 2018.

6 26. On May 17, 2018, Plaintiff’s bank sent him a fraud alert e-mail informing him of
7 several unauthorized, attempted credit card transactions.

8 27. Defendant has yet to issue individual notifications to those affected by this data
9 breach, alerting them to the danger they face and informing them as to precisely what
10 information was compromised.

11 28. On information and belief, Brinker negligently stored Plaintiff’s debit and credit
12 card information for far longer than was reasonably necessary to complete the transaction(s),
13 negligently safeguarded Plaintiff’s information, and failed to put in place industry standard
14 procedures for detecting and preventing unauthorized access to and dissemination of Plaintiff’s
15 credit and debit card information. As a result of Brinker’s negligence, Plaintiff’s credit card
16 information was stolen by unknown parties.

17
18 **FIRST CAUSE OF ACTION**

19 **Negligence**

20 **(On Behalf of the Nationwide Class Against All Defendants)**

21 29. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs of this
22 complaint as if fully set forth herein.

23 30. Defendants owed a duty to Plaintiff and Class Members to exercise reasonable
24 care in safeguarding, securing and protecting Plaintiff’s and the Class Members’ debit and credit
25 card information from, among other failures, being compromised, lost, stolen, misused, and/or
26 disclosed to unauthorized parties.

31. Defendants also owed a duty to Plaintiff and the Class Members to have commercially reasonable procedures in place to detect and prevent the loss or unauthorized dissemination of Plaintiff's and Class Members' debit and credit card information.

32. Defendants, through their actions and/or omissions, failed to exercise reasonable care and breached each and every one of their duties owed to Plaintiff and Class Members.

33. Section 5 of the FTC Act prohibits “unfair . . . practices in or affecting commerce.” Defendants violated Section 5 by failing to have industry standard procedures in place to detect and prevent the loss or unauthorized dissemination of Plaintiff’s and Class Members’ debit and credit card information.

34. Plaintiff and Class Members are within the class of persons that the FTC Act was intended to protect, and the harm that they suffered is the type of harm that the Act was intended to guard against.

35. Defendant's breaches of duties owed to Plaintiff and Class Members proximately and directly caused Plaintiff's and Class Members' past and future injuries.

36. Plaintiff and Class Members suffered actual past injuries, including economic injuries, and will suffer future injuries as a result of Defendants' negligence.

SECOND CAUSE OF ACTION

Breach of Implied Contract

(On Behalf of the Nationwide Class Against All Defendants)

37. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs of this complaint as if fully set forth herein.

38. Defendants offered to and undertook duties to, among other obligations, reasonably safeguard Plaintiff's and Class Members' credit and debit card information.

39. By providing their credit and debit card information, Plaintiff and the Class Members accepted Defendants' offer.

40. Defendants, Plaintiff and the Class Members entered into implied contracts with Defendants whereby Defendants offered to undertake and undertook duties to, among other

1 obligations, reasonably safeguard Plaintiff's and Class Members' credit and debit card
2 information and process such information in a manner so as not to permit third parties to access
3 it.

4 41. Defendants, Plaintiff and Class Members mutually intended to be bound by their
5 implied contract.

6 42. There was consideration for the implied contract between Defendants, Plaintiff
7 and Class Members, including but not limited to Defendants' receipt of payments for their
8 restaurant services.

9 43. Defendants breached the implied contracts with Plaintiff and Class Members.

10 44. Plaintiff and Class Members suffered actual injuries, including economic injuries,
11 and will suffer future injuries as a direct and proximate result of Defendants' breach of implied
12 contracts.

13
14 **THIRD CAUSE OF ACTION**

15 **Violations of the California Unfair Competition Law**

16 **Cal. Bus. & Prof. Code § 17200, *et seq.***

17 **(On Behalf of the California Class Against All Defendants)**

18 45. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs of this
19 complaint as if fully set forth herein.

20 46. Defendants' misconduct constitutes unfair, unlawful and fraudulent business
21 practices within the meaning of California's Unfair Competition Law, Cal. Bus. & Prof. Code §
22 17200, *et seq.* ("UCL").

23 47. Defendants' misconduct violated several laws alleged and therefore violated the
24 UCL.

25 48. Defendants' statements concerning its abilities to properly safeguard Plaintiff and
26 Class Members' credit and debit card information were fraudulent and therefore also violated the
27 UCL.

49. Defendants' failure to safeguard Plaintiff and Class Members' credit and debit card information was unfair and therefore also violated the UCL.

50. Plaintiff and Class Members suffered actual injuries, including economic injuries, and will suffer future injuries as a direct and proximate result of Defendants' violations of the UCL.

51. Defendants were guilty of oppression, fraud, and/or malice in that Defendants acted and/or failed to act with a willful and conscious disregard of the rights of Plaintiff and the Class Members. Plaintiff and the Class Members therefore seek punitive damages on behalf of themselves and the Class.

FOURTH CAUSE OF ACTION

Violations of the California Customer Records Act

Cal. Civ. Code § 1798.80, *et seq.*

(On Behalf of the California Class Against All Defendants)

52. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs of this complaint as if fully set forth herein.

53. Defendants’ misconduct resulted in a “breach of the security system”, within the meaning of Section 1798.82(g) of the California Consumer Records Act, Cal. Civ. Code § 1798.80, *et seq.*

54. Defendants lost Plaintiff and the Class Members’ “personal information” within the meaning of Cal. Civ. Code § 1798.80 (e).

55. Among other misconduct, Defendants failed to implement and maintain reasonable security procedures and practices appropriate to the nature and scope of the information compromised in the data breach of the system(s) holding Plaintiff's and Class Members' credit and debit card information.

56. Defendants unreasonably delayed in informing Plaintiff and Class Members regarding the security breach of Plaintiff's and Class Members' credit and debit card information after Defendants knew the data breach had occurred.

6. For any other available penalties for each illegal or fraudulent business act or practice, including but not limited to those provided for violations of Cal. Civ. Code § 1798.84;
7. For costs and expenses of suit incurred herein, including investigative costs;
8. For attorneys' fees;
9. For punitive damages;
10. For prejudgment and postjudgment interest; and
11. Such other and further relief as is proper and just.

DEMAND FOR JURY TRIAL

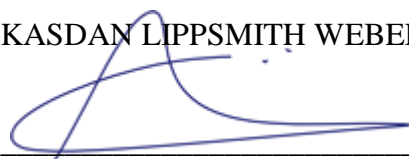
Plaintiff, on behalf of himself and the Class, hereby demands a jury trial for all issues so triable.

Dated: June 14, 2018

AHDOOT & WOLFSON, PC

/s/ Tina Wolfson
Theodore W. Maya
Tina Wolfson
Robert Ahdoot

KASDAN LIPPSMITH WEBER TURNER LLP


Graham B. LippSmith
Jaclyn L. Anderson
Frank A. Perez

Attorneys for Plaintiff and the Class